IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 2577 OF 2006

M.H. Saboo Siddik Polytechnic
through its Principal
Abdul Razak Adamsaheb Honnutagi ... Petitioner.

V/s.

Imtiyaz ul Hague and Others. ...Respondents.

Mr. U.G. Kerkar for the Petitioner.
Mr. P.S. Dani with Nasir Masin Shaikh for Respondent No.1
Mr. R.M. Vanoo for Respondent Nos. 2 and 3.
Mrs. A.R. Lambay for Respondent No.6.

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CORAM : DR. D.Y. CHANDRACHUD,J.

6TH OCTOBER,2006.

P.C. :

1. The School Tribunal by its order dated 29th April 2006 granted re-instatement on an Appeal filed by the first Respondent under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. A disciplinary enquiry was held against the first Respondent. A majority of the three member Enquiry Committee came to the conclusion that the charge of misconduct against the first Respondent (who, it is alleged has made certain allegations against the Principal and the 6th Respondent) was not proved. One of the three members differed with the majority. The management proceeded to terminate the services of the first Respondent, by accepting the minority view of one member of the Enquiry Committee. No show cause notice was

given to the first Respondent to explain why a view differing with the view taken by the Enquiry Committee should not be taken. The 2nd and 3rd Respondents represent the management. The expression "management" is defined by Section 2(12) of the Act to interalia mean the person or body of persons administering the school. In the present case, the management has not challenged the order of the School Tribunal. The management who is represented by the 2nd and 3rd Respondents has seriously contested the locus of the Petitioner, who is the Principal to challenge the order of the Tribunal particularly when the management has decided not to do so.

2. There is merit in the objection raised on behalf of the 1st, 2nd and 3rd Respondents to the maintainability of the Writ Petition instituted at the behest of the Principal. The disciplinary jurisdiction over an employee of a private school is vested in the management under Rules 28, 29 and the succeeding provisions of the Maharashtra Employees of Private Schools Rules, 1981. That is consistent with the basic principle in service jurisprudence that it is for the employer to decide upon the course of action to be taken in instituting and pursuing a disciplinary proceeding. The Principal may have a grievance against the First Respondent but he cannot over ride the decision of the management if it choses in the facts of a case not to challenge the order of the School Tribunal.

3. In these circumstances, this Petition at the behest of the Principal of the Polytechnic, is not maintainable and should be dismissed on that ground alone.

4. Counsel appearing on behalf of the Petitioner relied upon an alleged resolution dated 22nd August 2006. This is not a resolution passed by the Management. The document is signed by the Principal himself and authorises him to appoint an Advocate to file a Petition against the order of the School Tribunal. That is nothing more than an authority by the Petitioner to himself.

5. In these circumstances, the Petition shall stand dismissed.